Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Subservient Officials.

Recklessness in breaking the laws and killing fellow citizens would seem to be something for officials to prevent and punish by sharp action. But automobiles have been unlawfully driven over city and country roads at terrific speed, killing people, with but little attention from the public authorities. Is this due to the mere inertia of the officials, or is it partly due to their subserviency to people of wealth? The newspapers report that in one instance the authorities sent a notice warning a rich and prominent man who had been guilty of aggravated violations of the law with his automobile, that these must not continue. If it is the custom of the authorities of that town to notify offenders before making them any trouble, it would be interesting to know how the experiment works. But it would be quite as interesting to know whether the warning in this case was not due to the fact that the offender was a prominent man of wealth. Incidents like this are not trivial. The very popular, but pernicious, theory that the law is all on the side of the rich is greatly strengthened in the minds of the multitude when they see the officers of the law give to a rich offender a warning instead of punishment. Officers who do these things may act with good intentions, but any discrimination between rich and poor in the enforcement of the law sows seeds of danger. Any official who is guilty of it deserves to be made infamous. Public wrath against officials who are partial and subservient cannot be too fierce and blistering.

Transfer of Theater Ticket.

A decision that a theater ticket is a mere license, and not a contract which can be assigned, was recently rendered in the case of Collister *v.* Hayman, 75 N. Y. Supp. 1112. The refusal of the theater proprietor to recognize tickets which had been bought of speculators was upheld by the court. In this case the tickets contained a printed notice giving warning to purchasers of their nontransferability. The case substantially follows that of Purcell *v.* Daly, 19 Abbott's New Cases, 301, where the court says: "The proprietor of a theater has a perfect right to say whom he will or will not admit to his theater," and that "a theater ticket is simply a license to the party presenting the same to witness a performance to be given at a certain time, and, being a license personal in its character, can be revoked." That case, however, did not involve any question of the right to transfer the ticket, though the ticket contained a statement that it was a personal license, and not transferable. An implied right to transfer a theater ticket, if there were no stipulation or notice to the contrary, would seem reasonable, but, if the ticket is in its nature only a personal license, it might be asked

what foundation there can be on which to rest such a claim. But if the ticket is not a contract, there is a contract behind it. That is, a contract of purchase. The right to recover back the purchase price in case the proprietor of the theater refuses to honor the ticket, and also to recover damages that may directly result therefrom, is conceded by the court in the Purcell Case. Therefore, it seems clear that there is a contract between the parties and room for the contention that an implied provision of it is a right to transfer the ticket, unless there is some stipulation or notice to the contrary. Whether such a right of transfer is implied or not in such a case seems still an open question.

Places Hired to View Coronation Parade.

Those who paid large sums for the use of stands, windows, or other desirable places from which to view the coronation parade, but who got no benefit therefrom on account of the necessary abandonment of the parade because of the dangerous illness of the King, are in a situation which requires a new application of the old maxim respecting a loss which must fall on one of two innocent persons. Some question has been made as to the right to recover back the money paid for these places on the ground that there was a failure of consideration. Of course, the failure of consideration was complete so far as concerns any benefit actually received by the hirer in such a case. But, on the other hand, the other party was in no way responsible for the loss of advantage, and in fact fully performed all that his contract required, if on the day named the stand, window, or other hired place was ready and at the disposal of the person who hired it. Under these circumstances, it does not seem to be a case which comes within the application of the rule for recovering back the money paid on a contract on the ground of the failure of consideration. Full and complete performance of a contract by a party thereto seems clearly sufficient to entitle him to retain the consideration which he has actually received therefor, without regard to the fact that, by reason of extraneous circumstances for which he is in no way responsible, the other party may have failed to get the benefit which he expected to result from such performance.

Gambling on the King's Life.

The article in last month's CASE AND COMMENT on the subject of insuring a person's life without his consent has been given some emphasis since it was written by the dangerous illness of King Edward. A recent London news item says that thousands of insurance policies on the life of the King have been issued during the past year; that the insurance which was at first taken by people who had business interests which would be specially affected by the life or death of the King has extended to others who are mere gamblers and take the insurance merely as a gambling speculation. This item says that there are thousands now gambling on the life of their ruler. The rates on the King's life are also stated to have been raised, when the magnitude of these insurance speculations began to increase, until it went up from 3 per cent to 10 per cent, and most of the policies are said to have been made for a short time, and designed to run only long enough to include the coronation. It is possible that there are some features of these insurance policies on the King's life that have not been fully explained to us on this side of the water. But, unless the news concerning them is altogether untrue, the insurance companies in England are carrying on a business that in this country would be deemed utterly void and peculiarly pernicious. Without any regard to the question of the King's consent to such insurance, which, of course, he does not give, many of the insurance policies, if they are at all such as the news items from London have described, are contrary to the public policy recognized by the courts of this country, because they are issued to people who have no insurable interest. If the English courts uphold policies of this kind they furnish one striking instance, at least, in which the unwritten law of that country is on a lower level than that of this country. It has often been said that gambling is far more general in England than in this country, but it does not seem possible that the English courts can regard it as a legitimate branch of the insurance business.

Is There Any Combination of Meat or Coal Dealers?

A sharp criticism on the article in the May number of CASE AND COMMENT entitled "Monopolies in the Necessaries of Life" comes from a prominent attorney of New York who is counsel for one of the leading packing houses, and also for one of the coal companies. He says of the article: "This is utterly misleading, as no such monopolies exist, and no facts have been produced tending to show anything of the sort. It seems strange that a legal periodical should be so inaccurate." In reply to a letter seeking to find out whether his criticism was based on the use of the word "monopoly," or whether he meant to deny that there was any combination of the meat or coal companies, he asserts that there is absolutely no foundation for the assumption that any "combination" or "monopoly" exists. As counsel for some of these companies, he positively denies that there is any such combination. But his statement that there are no facts "tending to show anything of the sort" seems somewhat remarkable. To indicate to him one class of the facts tending to show anything of this sort, he was cited to the fact that retail coal dealers of a city had been compelled by the companies whose coal they sell to adopt identically the same schedule of prices, running for months into the future, and had been made to understand in some way that they must keep to that schedule or they could get no coal and would have to go out of business. The supposition that facts of this kind are due to a mere coincidence, and do not even "tend to show" any understanding between the coal companies with respect to prices, requires a degree of credulity not possessed by ordinary men.

The duty of a legal periodical to "wait until the facts are established by some competent authority," and not to make any assumptions based upon hearsay, is vigorously asserted by our critic. CASE AND COMMENT certainly does not wish to make any unwarranted assumptions. But the technical rules of criminal procedure hardly apply to the discussion of public questions. The forcing of a schedule of prices upon local dealers by the coal companies is a matter of public knowledge, not of hearsay; and the theory that the great coal companies, in raising their prices to exactly the same notch at precisely the same time, and extinguishing the independence of local dealers by forcing identically the same schedule upon them all, have acted without any prearrangement or understanding, will hardly gain credit.

Something like an admission by our critic of the existence of some combination or agreement to fix prices seems to be furnished, however, by his own letter. In answer to the statement that retail coal dealers had been compelled by their companies to adopt the same schedule of prices, he says: "Doubtless you are aware that in the Trans-Missouri Case Judge Peckham suggested that it was proper, and even desirable, for independent business men to avoid ruinous competition, and that such action upon their part did not constitute any unlawful combination. The same principle has frequently been recognized by the courts." This does not appear to have any relevancy to the subject, except on the supposition that some understanding or arrangement to avoid competition has been reached. Such an arrangement or understanding is exactly what CASE AND COMMENT meant by a combination to fix prices. It did not say the combination was "unlawful."

Rights in a Portrait.

The famous Roberson Case, in which a girl's portrait was used, without her consent, for advertising purposes, has just been decided by the New York court of appeals by a vote of four to three. A bare majority of the court deny that any right of action is set up by her complaint, or that there is any such thing as a right of privacy which the law can protect.

The right of privacy, as CASE AND COMMENT has heretofore undertaken to demonstrate, can have no existence consistent with free speech. To speak of, discuss, or publish facts concerning a person cannot be actionable merely because the person prefers to remain unnoticed, unless what is said or published is in some way damaging, either to the reputation and standing of the person, or to some property right. Every case in which the right of privacy has been in any degree recognized has involved, not simply the fact of publicity, but also the element

of damage either to the person's reputation or property rights. With all respect to the courts that have talked about a right of privacy, it is proper to say that the use of that term is misleading and confusing. No court has held, and it is far from likely that any court ever will hold, that there is an actionable infringement of privacy, unless it involves some damage either to the property or reputation. It is therefore entirely clear that the gist of every such action is not mere invasion of privacy, but the injury to reputation or property. A recognition of this fact greatly helps to make the subject clear. In refusing to recognize the doctrine of a right to privacy, the court of appeals has avoided a precedent that must have certainly led to confusion and inconsistency. But the denial of that doctrine is by no means conclusive against the right to protection against the unauthorized publication of one's portrait.

The principles of the law of libel ought to be broad enough to cover a case of this kind. The majority opinion in the Roberson Case says that the use of a portrait for advertising might be libelous if it could be justly found by a jury to cast "ridicule or obloquy" on the person whose portrait was used. But the court held that there was a lack of proper allegations in the complaint to make a case for libel. Certainly a very slight measure of ridicule or obloquy—even the least tendency to disgrace or degrade a person—ought to be held sufficient to make a cause of action of this kind when a woman's portrait is shamelessly and insolently appropriated in defiance of her wishes, and used in trade for profit.

The question of a property right in the use of one's own portrait for advertising purposes was not discussed by the court. Possibly it was not argued. Whatever value there may be, either in a person's portrait, or name, for trade purposes, must certainly be a property right. Courts protect the name, and on exactly the same principles must protect the portrait. The fact that there is a value in a portrait for advertising is the only reason for perpetrating the nefarious outrage of stealing it for such use. When recognized as having a property value, it would be preposterous to say that it does not belong to the person whom the name or the portrait represents.

It would be a biting reproach to our jurisprudence if lawless and unscrupulous men could insolently exploit for their own profit the portraits of other men, or women, with impunity. If that were so, advertisers would soon be more bold and indecent than the yellow journals. The more prominent the station and rank of a lady, the more she were known to the public, the more desirable her portrait would be for advertising purposes. Its use for newspaper and street-car advertisements of corsets, hose supporters, and suits of underwear might, in the language of the majority opinion in the Roberson Case, cause her to "suffer mental distress where others would have appreciated the compliment to their beauty implied in the selection of the picture for such purposes;" yet here, as in the Roberson Case, she might have no grievance on the ground that her likeness was not "a very good one and one that her friends and acquaintances were able to recognize." It is safe to say that no lawyer and no judge would have any doubt, if the portrait of his own wife or daughter were thus appropriated, that a wrong had been committed which the general principles of the law could reach without an act of the legislature.

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Action.

A simple-contract creditor, who has no lien on the property, is held in Flournoy *v.* Champion (N. M.) 55 L. R. A. 745, to have no right to intervene in a suit in equity for the appointment of a receiver of partnership property, and secure a judgment against the partnership and one of its members, but is relegated to an action at law, the defendants being entitled to a trial by jury.

An action for libel against a corporation, which abates by the expiration of the corporate charter, is held, in Shayne *v.* Evening Post Pub. Co. (N. Y.) 55 L. R. A. 777, to be properly revived against the trustees of the dissolved corporation in office at the time of dissolution.

A judgment for alimony in favor of a wife, the right to which becomes vested by force of statute upon a decree of divorce for the fault of the husband, is held, in Coffman *v.* Finney (Ohio) 55 L. R. A. 794, to be a debt against the husband, subject only to variation in amount in case of appeal, which, upon the death of both parties pending appeal, will survive in favor of the personal representative of the wife, and against the personal representative of the husband.

Adverse Possession.

Land within the boundaries of a street as shown on a plat filed in the clerk's office under the provisions of the law incorporating a town, which declares that the plat shall be conclusive evidence of the street boundaries in all future suits and contests that may arise concerning them, is held, in McClellan *v.* Weston (W. Va.) 55 L. R. A. 898, not to be subject to adverse possession as against the town.

Animals.

That an assault committed by a dog in jumping upon a stranger and injuring him resulted merely from its mischievous or playful propensity is held, in Crowley *v.* Groonell (Vt.) 55 L. R. A. 876, not to absolve the owner from liability, if he knew of its disposition to commit such injuries, or

knew enough of its habits to convince a man of ordinary prudence of its inclination to commit them.

Arrest.

A peace officer attempting to make an arrest for unlawfully carrying arms is held in Montgomery *v.* State (Tex. Crim. App.) 55 L. R. A. 866, to be bound to make known to accused under what authority the arrest is made, although by statute he has power to make the arrest without warrant, where he is by statute required, in executing warrants, to make known his authority.

Attachment.

The reversionary interest in certificates of stock in a foreign corporation, owned by a nonresident and pledged to a resident for payment of a debt, is held, in Simpson *v.* Jersey City C. Co. (N. Y.) 55 L. R. A. 796, to be subject to attachment for claims against the nonresident owner.

Bankruptcy.

The bankruptcy act of July 1, 1898 (30 Stat. at L. 544, chap. 541), is held in Hanover Nat. Bank *v.* Moyses, Advance Sheets U. S. p. 857, not to be unconstitutional because it provides that others than traders may be adjudged bankrupts, and that this may be done on voluntary petition.

Bills and Notes.

No liability in favor of a bona fide purchaser of a negotiable paper is held, in Salley *v.* Terrill (Me.) 55 L. R. A. 730, to attach to the maker, where it was drawn and signed but not delivered or intended to be delivered, but was obtained by the payee by theft, without gross carelessness or recklessness on the part of the maker.

A street railway company is held in Fewings *v.* Mendenhall (Minn.) 55 L. R. A. 713, not to be guilty of negligence in attempting to operate its cars during a strike of its employees unless the conditions are such that it ought to know that it cannot do so and at the same time guard from violence, by the exercise of the utmost care on its part, those who accept its implied invitation to become passengers.

Bonds.

Knowledge of an employee of another employee's default, not communicated to the employer, is held, in Fidelity & Deposit Co. *v.* Courtney, Advance Sheets U. S. p. 833, not to be imputable, in the absence of an express agreement, to such employer, so as to relieve the surety on a bond given to the employer conditioned for the faithful performance by the employee of his duties.

Carriers.

A state legislature is held, in Minneapolis & St. L. R. Co. *v.* Minnesota *ex rel.* Railroad & Warehouse Commission, Advance Sheets U. S. p. 900, to have the right to authorize its railroad commission to reduce as unreasonable a joint through rate agreed upon by two or more railroads, and apportion the same among the several railroad companies interested.

Conflict of Laws.

The attempt to enforce a mortgage on land in one state to secure a building association loan and contract made in another state is held, in McIlwaine *v.* Ellington (C. C. A. 4th C.) 55 L. R. A. 933, not to require the validity of the contract and the amount due under it to be determined by the law of the state where the land is situated.

Conspiracy.

A retail coal dealer injured by a combination between wholesalers and favored retailers to monopolize the business, enhance prices, and drive other retailers out of the business, is held in Hawarden *v.* Youghiogheny L. Coal Co. (Wis.) 55 L. R. A. 828, to have a right of action against the conspirators for the damages caused thereby.

Constitutional Law.

An unconstitutional deprivation of local self-government is held in Redell *v.* Moores (Neb.) 55 L. R. A. 740, not to be made by a statute creating a board of fire and police commissioners for cities of the metropolitan class, and placing power of appointment thereto in the governor, since the power to create municipal corporations which is

vested in the legislature implies the power to impose upon them such limitations as the legislature may see fit.

A legislative enactment which discriminates against osteopathists, by requiring them to hold diplomas from a college which requires four years of study as a condition to their obtaining limited certificates, which will not permit them to prescribe drugs or perform surgery, while not requiring such time of study from those contemplating the regular practice as a condition to their obtaining unlimited certificates, is held, in State *v.* Gravett (Ohio) 55 L. R. A. 791, to be void.

A grant of judicial power in violation of Wis. Const., providing that the judicial power of the state, both as to matters of law and equity, shall be vested in certain specified courts, is held, in State *ex rel.* Ellis *v.* Thorne (Wis.) 55 L. R. A. 956, not to be made by a statute providing for the appointment of commissioners by a circuit judge of any county on petition to review the apportionment for the year of county and state taxes and to correct it if justice so requires, and making their decision final, the enactment of such a law being a legitimate exercise of the power possessed by the legislature over the whole subject of taxation.

No unconstitutional discrimination against nonresident stockholders in domestic corporations is held, in Travelers' Ins. Co. *v.* Connecticut, Advance Sheets U. S. p. 673, to be made by Conn. Pub. Acts 1897, chap. 153, § 2, providing for the assessment of such stock at its market value, with no deduction on account of real estate held by the corporation, although provision for such deduction in assessing resident stockholders is made by Conn. Gen. Stat. § 3836, as amended by Pub. Acts 1889, chap. 63, since nonresident stockholders pay no local taxes, but simply contribute so much to the general expenses of the state, while the resident stockholders pay no tax to the state, but only to the municipality in which they reside.

An unconstitutional regulation of commerce is held, in Compagnie Francaise de Navigation a Vapeur *v.* State Board of Health, Advance Sheets U. S. p. 811, not to be made by La. Acts 1898, No. 192, § 8, under which the state board of health may exclude healthy persons from entering a locality infested with a contagious or infectious disease, whether such persons come from within or without the state.

Contracts.

One seeking to rescind a mutual contract, of which time is not of the essence, on the ground of delay by the other party in complying with its terms, is held in Reid *v.* Mix (Kan.) 55 L. R. A. 706, to be required to show, either such wilful and intentional delay as will evince the intention of the party delaying to treat the contract as at an end, or that the delay has caused such damages as will render a decree of specific performance inequitable and unjust.

Conversion.

One who has purchased in good faith, without actual notice, mortgaged chattels from a mortgagor in possession, is held, in Dean *v.* Cushman (Me.) 55 L. R. A. 959, not to be liable for conversion without demand or refusal.

Corporations.

See also ACTION OR SUIT; WRIT AND PROCESS.

Directors of a corporation are held, in Bosworth *v.* Allen (N. Y.) 55 L. R. A. 751, to be charged with the duties of trustees, and to be liable to account in equity, the same as ordinary trustees, for a violation of their duty resulting in waste of the assets by the corporation, injury to its property, or unlawful gain to themselves.

The right granted to a corporation by a municipal ordinance to construct and maintain an electric-light plant, even assuming such right was exclusive, is held, in Capital City Light & F. Co. *v.* Tallahassee, Advance Sheets U. S. p. 866, not to be impaired by Fla. Laws, chap. 4600, or Fla. act May 27, 1899, empowering the city to construct and maintain its own electric-light plant, where nothing had been done by the grantee looking towards the erection and operation of such a plant, although it had erected and operated the gas plant which it was authorized by the same ordinance to construct and maintain.

In Williams *v.* Gaylord, Advance Sheets U. S. p. 798, it is held that a state may re-

quire the consent of the stockholders of a foreign mining corporation as a necessary prerequisite to the sale or encumbrance of the mining ground owned by it within the state, as such a requirement is not a regulation of the internal affairs of the corporation, but has reference to the conduct by it of its business.

Covenants.

The right of a municipality to reassess the cost of a street improvement upon abutting property after an assessment is set aside as in contravention of the charter is held, in Green v. Tidball (Wash.) 55 L. R. A. 879, to be within a covenant against encumbrances, in a conveyance of the property made subsequent to the improvement.

A homestead exemption is held, in Lyons v. Andry (La.) 55 L. R. A. 724, not to be lost by failure to actually reside upon the property, where the homesteader left the place because his house was blown down by a storm, and lived with a son at a short distance, but visited his place every day, and continued to cultivate garden truck upon it by which he earned his living.

Husband and Wife.

See also ACTION OR SUIT.

Adultery of plaintiff is held, in Decker v. Decker (Ill.) 55 L. R. A. 697, to be properly set up in the answer in a proceeding for divorce for cruelty and impotency, and it is not necessary to file a cross bill for that purpose.

Subsequent adultery of a wife is held, in Cariens v. Cariens (W. Va.) 55 L. R. A. 930, to discharge the husband from the payment of alimony awarded to the wife under a decree of divorce *à mensa et thoro*.

Incompetent Persons.

A statute permitting commitment to a hospital for the insane upon an application by a relative or friend of the alleged insane person, or by any one of certain officials, accompanied by a certificate of authorized medical examiners that insanity exists, but without any provision for notice to the alleged insane person, is held, in *Re* Lambert (Cal.) 55 L. R. A. 856, to be void as depriving him of liberty without due process of law.

Infants.

A father, who has committed the custody of his infant child to another person by agreement to be maintained and cared for, which agreement has been acted upon by such other person, is held in Fletcher v. Hickman (W. Va.) 55 L. R. A. 896, to be bound by the agreement, unless he can show that the change of custody will plainly promote the child's welfare.

Injunction.

See WASTE.

Insurance.

The value of insured chattels destroyed at a location to which they were removed with the insurer's consent is held, in Ohio Farmers' Ins. Co. v. Burget (Ohio) 55 L. R. A. 825, to be recoverable, notwithstanding their previous removal to another location without such consent, under a policy providing that it shall become void if any change takes place in the location of the property unless consent in writing is obtained from the company.

The words "for account of whom it may concern," inserted in writing immediately following the name of the insured in a policy of marine insurance, are held, in Hagan v. Scottish Union & Nat. Ins. Co. Advance Sheets U. S. p. 862, to protect a subsequent vendee of an interest in the vessel, notwithstanding the retention in the policy, which is written on a blank intended for insurance of property on land, of the printed clause that such policy shall be entirely void, unless otherwise provided by agreement, if any change in interest, title, or possession shall be made.

A state is held, in Fidelity Mutual L. Asso. v. Mettler, Advance Sheets U. S. p. 662, to have the right to impose upon life or health insurance companies, as a condition of doing business within the state, the obligation to pay damages and attorneys' fees in case of default in the payment of their policies.

Judgment.

A creditor who after his debtor has made a fraudulent and voluntary conveyance of his real estate, but before any other creditor

files a bill in equity to set aside such conveyance, obtains a judgment in a court of law against such debtor, is held, in Foley v. Ruley (W. Va.) 55 L. R. A. 916, to have a lien, by virtue of his judgment, upon the real estate so conveyed, from the date of the judgment, superior and prior to that of the creditor assailing the deed.

Libel.

The privilege of criticising candidates for office is held in Coffin v. Brown (Md.) 55 L. R. A. 732, not to extend to falsely attacking the character of an officer appointed by the governor, for the purpose of defeating the latter's re-election to office.

Liens.

A lien for attorneys' fees allowed by a judgment foreclosing a real-estate mortgage is held, in Loofbourow v. Hicks (Utah) 55 L. R. A. 874, to attach to the land, and to be enforceable against it after it has been bid in by the mortgagee or his assignee with notice, for an amount less than that due on the mortgage, which has been credited on the judgment.

Master and Servant.

The noon intermission is held, in Mitchell-Tranter Co. v. Ehmet (Ky.) 55 L. R. A. 710, not to sever the relation of a servant to his master, so as to prevent his recovery for an injury resulting from an unsafe working place, received while attempting during that time, by direction of a superior, to remove broken timbers which render unsafe the work of the employees.

Authority to a railroad company to "farm out" its right of transportation is held in Harden v. North Carolina R. Co. (N. C.) 55 L. R. A. 784, not to confer power to execute a lease exempting it from liability for injuries to the lessee's employees through the lessee's negligence.

The act of a servant of a railroad company instructed to watch a station and catch burglars, in mistaking a coemployee for a burglar and shooting him through want of proper care, is held, in Lipscomb v. Houston & T. C. R. Co. (Tex.) 55 L. R. A. 869, to render the company liable.

A foreman of a lumber camp, whose duty, in the interest of a common employer, requires him to ride on a log train to and from the camp to the mill, is held in Sanderson v. Panther Lumber Co. (W. Va.) 55 L. R. A. 908, to be a fellow servant with the employees of the same employer operating such log train.

Mortgage.

The lien of a mortgage given to secure payment of money loaned on a promissory note is held, in Newhall v. Hatch (Cal.) 55 L. R. A. 673, to be extended, as against subsequent judgment creditors of the mortgagor, by the renewal of the note before it is barred by the statute of limitations.

Municipal Corporations.

See also CONSTITUTIONAL LAW; WATERS.

An election of officers by vote of a majority of a joint session of both branches of the city council under the provisions of a statute is held, in Schmulbach v. Speidel (W. Va.) 55 L. R. A. 922, not to be invalid because a majority of the members of one branch of the council did not vote, and were present, not voluntarily, but only because they had been arrested and compelled to attend under provisions of a city ordinance, and the presence of the majority of the members of each branch was necessary to constitute a quorum.

Negligence.

See also TRIAL.

The manufacturer of a drop press is held, in McCaffrey v. Mossberg & G. Mfg. Co. (R. I.) 55 L. R. A. 822, not to be liable to a purchaser's employee for injuries caused by the breaking of a defective hook holding a heavy weight, the cause of the injury not being in its nature imminently dangerous, and there being no fraud or concealment or implied invitation to the employee to use the machine.

One who, in the operation of his coal mines upon his own land, uses a cable running upon pulleys to haul coal cars from his mine, is held in Uttermohlen v. Bogg's Run Min. & M. Co. (W. Va.) 55 L. R. A. 911, not to be liable for injury to a child trespassing on the premises by such cable and pulleys.

Nuisance.

A stepping stone to facilitate access to carriages, placed near the edge of a sidewalk, which does not interfere in the least with the use of the roadway, is held, in Robert v. Powell (N. Y.) 55 L. R. A. 775, not to be a nuisance, so as to give a foot passenger injured by stumbling over it in attempting to cross the street at a time when it is plainly visible a right of action against the owner.

Osteopathy.

See CONSTITUTIONAL LAW.

Patents.

The rights of a purchaser of a patented machine are held, in Goodyear Shoe Mfg. Co. v. Jackson (C. C. A. 1st C.) 55 L. R. A. 692, to extend to repairing or restoring it after decay, injury, or partial destruction, but not to complete reconstruction, or production over again of the patented article as a whole, after it has fulfilled its purpose and has been destroyed.

Pleading.

To maintain an action against an infant for the value of food and lodging furnished to it, it is held, in Goodman v. Alexander (N. Y.) 55 L. R. A. 781, not to be necessary to state in the declaration that defendant had no father, or other person standing *in loco parentis*, who could support it, either at common law or under a statute requiring the complaint to contain a plain and concise statement of the facts constituting the cause of action.

Public Improvements.

An assessment upon abutting property of the cost of a street improvement is held, in King v. Portland (Or.) 55 L. R. A. 812, to be properly upheld whenever it is not patent and obvious that the plan or method adopted has resulted in imposing a burden in substantial excess of the benefits, or disproportionate within the district as between owners.

Statutes.

The power to revise, without republication, a code of civil procedure to the extent of amending over 400 sections, repealing nearly 100, adding many new ones, and changing section numbers and headings, is denied in Lewis v. Dunne (Cal.) 55 L. R. A. 833, where the Constitution provides that no law shall be revised or amended by reference to its title, but in such case the act revised shall be re-enacted and published at length as revised or amended.

Under constitutional power to disapprove of any item or items of an appropriation bill, the executive is held, in Com. *ex rel.* Elkin v. Barnett (Pa.) 55 L. R. A. 882, to have the right to disapprove one or more of the subdivisions of a clause making appropriations for schools, by which the amount is distributed among separate designated schools or educational interests, either as to the beneficiary, or as to the amount, and approve the residue.

Trial.

Undisputed facts in a negligence case are held, in Shobert v. May (Or.) 55 L. R. A. 810, not to entitle the court to determine the question of negligence as matter of law by instructing the jury that defendant was guilty of negligence, where the facts show the exercise of some degree of care at least.

Trust.

An agreement between the beneficiary of a spendthrift trust and the trustees by which he becomes entitled to a certain portion of the income absolutely, when by the terms of the instrument creating the trust the question whether any sum should be paid to the beneficiary, and, if so, what amount, and under what circumstances, was left to the discretion of the trustees, is held, in Murphy v. Delano (Me.) 55 L. R. A. 727, to be void, and not to bring the specified income within the reach of creditors.

Waste.

The opening of mines and mining of coal by the owner of a determinable fee in property of which the coal constitutes the chief value is held, in Gannon v. Peterson (Ill.) 55 L. R. A. 701, not to be such waste as can be enjoined by the owners of the expectancy, who claim under an executory devise.

Waters.

The gathering of surface waters from the streets of a township, and turning it out of its course in such quantities that the gutters are inadequate to carry it, so that it overflows and injures private property in the vicinity, is held, in McAskill v. Hancock (Mich.) 55 L. R. A. 738, to render the township liable.

Writ and Process.

A railroad company which organizes a company to construct an extension of its system into another state and through it operate such extension is held, in Buie v. Chicago, R. I. & P. R. Co. (Tex.) 55 L. R. A. 851, to be properly regarded as doing business in the latter state, so as to be liable to suit there, on causes of action arising out of the state, by service of process upon the officers of the new company.

New Books.

"Wait's Law and Practice." By Edwin Baylies. (Matthew Bender, Albany, N. Y.) 7th Ed. 3 Vols.

"The Tax Laws of the State of New York." Complete, and Gives the Law as Amended to Date, 1902. (Matthew Bender.) 1 Vol. $.50.

"Jewett's Election Manual." 10th Ed. 1902. (Matthew Bender) 1 Vol. Sheep, $2. Paper, $1.50.

"The Village Law of New York." By Cumming & Gilbert. (Matthew Bender) Revised Edition. 1 Vol. $3.

"Greene's Annotated Tax Law." (Matthew Bender) 2d Ed. 1 Vol. $3.

"Forest, Fish, and Game Laws of the State of New York." (Matthew Bender) 1 Vol. $.50.

"Greene on Highways." By L. L. Boyce. (Matthew Bender) 2d Ed. 1 Vol. $4.

"The Law of Street Surface Railroads." By Andrew J. Nellis. (Matthew Bender) 1 Vol. $6.

"Texas Notarial Manual and Form Book." By C. P. Smith. (Gammel Book Co., Austin, Tex.) 1 Vol. $4.

"Practice in Personal Actions in the Supreme, Superior, and Inferior Courts of Massachusetts." By Sidney Perley. (George B. Reed, Boston, Mass.) 1 Vol. $6.50.

"Preparation of Wills." By George F. Tucker. (George B. Reed) 1 Vol. $3.50.

"The Notaries' & Commissioners' Manual." By Wm. L. Snyder. (Baker, Voorhis & Co., New York) 7th Ed. Cloth, $1.50. Paper, $1.25.

"Probate Reports Annotated." By Frank S. Rice and George A. Clement. (Baker, Voorhis & Co.) Vols. 1–5 Now Ready. $5.50 per Vol.

"The General Railroad Laws of New York." (Banks & Company, Albany, N. Y.) 1 Vol. Buckram, $2. Paper, $1.50.

"The New York Tax Law of 1896 as Amended in 1897, 1898, 1899, 1900, 1901, and 1902." (Banks & Company) Paper, $.50.

"Code of Criminal Procedure." (Banks & Company) 1 Vol. 21st Ed. Canvas, $2.

"New York Penal Code." (Banks & Company) 21st Ed. Canvas, $2.

"A Manual for Boards of Health and Health Officers." By Lewis Balch. (Banks & Company) 1 Vol. $1.50.

"The Insurance Law." By Andrew Hamilton. (Banks & Company) 1 Vol. Canvas, $2. Paper, $1.50.

"Statutory Revision of the Laws of New York Affecting Miscellaneous Corporations." By Andrew Hamilton. (Banks & Company) 1 Vol. Paper, $1.50. Buckram, $2.

"The New Banking Law of the State of New York." (Banks & Company) 1 Vol. Paper, $1.50. Buckram, $2.

"Religious Corporations Law of the State of New York." With Amendments of 1902. By Rev. H. E. Waugh. (Banks & Company) 8th Ed. 1 Vol. Canvas, $1.50. Sheep, $2.

"Religious Corporations of New York." By Cumming and Gilbert. (Banks & Company) 1 Vol. Canvas, $2.50. Sheep, $3.

"A Supplementary Volume of the Massachusetts Digest." From Vol. 162 to Vol. 177. By C. N. Harris. (Little, Brown & Co., Boston, Mass.) 1 Vol. $5.

"Practical Legislation." By Lord Thring. (Little, Brown & Co.) 1 Vol. $2.50.

"The Ontario Century Digest." (The Carswell Co., Toronto, Ont.) 4 Vols. $12.50 per Vol.

"The Law of Taxation in Iowa." By Hon. Edwin A. Jaggard. (Keefe-Davidson Co., St. Paul, Minn.) 1 Vol. $7.50.

"Supplement of 1902 to Cumming and Gilbert's General Laws and Other General Statutes of New York." (Banks Law Publishing Co., New York) 1 Vol. $3.50.

"Stover's New York Annotated Code of Civil Procedure." By Amasa J. Parker. (Banks Law Publishing Company) 6th Ed. 3 Vols. $22.50.

"Studies in Juridical Law." By Horace E. Smith. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. $3.50.

"The Law of the Clearing House." By Archibald Robinson Watson. (Banks Law Publishing Company) 1 Vol. $1.75.

"Nebraska Digest." By E. L. Page. (Bancroft-Whitney Co., San Francisco, Cal.) 2 Vols. $20.

"Clark's Criminal Law." By Francis B. Tiffany. (West Publishing Company, St. Paul, Minn.) 2d Ed. 1 Vol. $3.75.

Recent Articles in Law Journals and Reviews.

"Limitation of Carrier's Liability and Failure to Stop in Transitu."—24 National Corporation Reporter, 453.

"The Essentials of Incorporation." — 24 National Corporation Reporter, 453, 487, 555.

"Rights of Residents of Porto Rico, Cuba, and Philippine Islands to Register Trademarks."—24 National Corporation Reporter, 452.

"The Injunction and Organized Labor."—34 Chicago Legal News, 327.

"Wanton Interference with Contract and Business Relations."—54 Central Law Journal, 426.

"Unrestricted Indorsements for Purpose of Collection."—19 Banking Law Journal, 320.

"The Negotiable Instruments Law: A Course of Study."—19 Banking Law Journal, 313.

"Independence of the Judiciary."—6 Law Notes, 43.

"Professional Crime and Its Cure."—6 Law Notes, 41.

"What Kinds of Goods Are in the Same Class."—1 Maryland Law Review, 67.

"Accidents at Summer Amusement Resorts."—6 Law Notes, 38.

"Conflict of Law as to Sale of Live Stock in One State Held under Chattel Mortgage in Another."—54 Central Law Journal, 443.

"The Civil Code of Japan Compared with the French Civil Code."—11 Yale Law Journal, 403.

"The Judiciary."—11 Yale Law Journal, 399.

"The Northern Securities Company."—11 Yale Law Journal, 387.

"Joint or Severable Liability of Master and Servant for Negligence as Affecting Removal of Causes."—54 Central Law Journal, 404.

"The Extent to Which Demonstrative Evidence May Be Admitted and Is Effective."—54 Central Law Journal, 401.

"Our Federal Courts versus Our State Courts."—6 Kansas City Bar Monthly, 1.

"Right of a Covenantee upon Breach of Warranty against Incumbrances."—54 Central Law Journal, 463.

"Agent's Knowledge of Breach of Restrictions of an Insurance Policy at Its Inception."—21 National Corporation Reporter, 489.

"The Constitutional Guaranty of Due Process of Law."—17 Chicago Law Journal, 424, 432.

"Spanish Treaty Claims Commission."—64 Albany Law Journal, 193.

"Voting Trusts in Reorganizing Corporations and for Other Purposes."—64 Albany Law Journal, 187.

"Rights and Duties of Adjoining Landowners; Lateral Support."—54 Central Law Journal, 483.

"Bankruptcy a Commercial Regulation."—15 Harvard Law Review, 829.

"Contracts for the Benefit of a Third Person."—15 Harvard Law Review, 767.

"The Relations between Telegraph or Telephone Companies and Railroads."—55 Central Law Journal, 6.

"Application of the Doctrine of Res Adjudicata to Habeas Corpus Proceedings."—55 Central Law Journal, 1.

"The Veto Power of the American Judiciary."—4 Brief of Phi Delta Phi, 121.

The Humorous Side.

AN ELASTIC WARRANT.—A North Dakota justice issued a warrant in the following terms: "I hereby issue this warrant at the request of P—— I—— for the arrest of parties who stole his stock from Beelfield in Stark county, and now supposed to be in Montana, whose names are unknown." This roving commission proceeds to say that it is "for the arrest of said parties and appearance before me for trial . . . soon as possible."